

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERWYN CAPITAL INVESTMENTS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
SHORE VENTURE GROUP, LLC;	:	
REVERSEBID.COM, LLC;	:	
TERRENCE J. KEPNER;	:	
and MATTHEW J. DYE	:	
	:	
v.	:	
	:	
AUTHENTIDATE HOLDING CORP.	:	
and AUTHENTIDATE, INC.	:	NO. 01-cv-00691-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 19, 2006

The defendant/third-party plaintiff, Shore Venture Group, LLC has moved for an award of attorneys' fees against the third-party defendants, Authentidate, Inc. and its parent, Authentidate Holding Corporation, citing a provision in the parties' agreement that Authentidate "shall reimburse [Shore Venture] for any reasonable cost of collection if [Authentidate] shall fail to make any fee payment hereunder when due." Shore Venture argues that "cost of collection" includes attorneys' fees while Authentidate contends that the language is insufficiently explicit to encompass such fees.

Under New Jersey law, which applies here, "attorneys' fees are not recoverable absent *express* authorization by statute, court rule or contract." McAdam v. Dean Witter Reynolds, Inc., 896 F.2d 750, 775 (3d Cir. 1990) (emphasis in original).

Although "parties may include fee-shifting provisions in their agreements, a corollary of our commitment to the so-called American rule of litigants paying their own fees is that such agreements will be strictly construed." Hatch v. T & L Assocs., 726 A.2d 308, 309 (N.J. Super. Ct. App. Div. 1999). The agreement lacks any language to suggest that attorneys' fees were an intended part of the "cost of collection." I therefore conclude that New Jersey law does not allow an award of attorneys' fees in this case.

An Order follows.

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ORDER

AND NOW, this 19th day of June 2006, upon consideration of Shore Venture Group, LLC's Motion for Counsel Fees and Expenses Pursuant to Fed. R. Civ. P. 54(D)(2)(A) and the Referral Agreement, and the opposition thereto,

IT IS ORDERED that the Motion is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.